

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 360

November 10, 1999, 1:27 p.m.  
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## BANKRUPTCY REFORM/Combating Drug Use, Protections from Violent Crimes

**SUBJECT:** Bankruptcy Reform Act of 1999 . . . S. 625. Hatch amendment No. 2771.

### ACTION: AMENDMENT AGREED TO, 50-49

**SYNOPSIS:** As reported, S. 625, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. It is similar to the bipartisan bill debated last session (see 105th Congress, 2nd session, vote No. 313).

**The Hatch amendment** would enact a broad range of initiatives to reduce illegal drug use and associated criminal activity and to protect Americans, particularly students, from violent crimes. Details are provided below.

- **Methamphetamine Anti-Proliferation Act.** The amendment would enact the Methamphetamine Anti-Proliferation Act, which would expand Federal efforts to stop the rapid growth in the illegal use of methamphetamine and amphetamine. The Act would increase penalties and expand law enforcement, prevention, and treatment efforts. Provisions include the following: Federal sentencing guidelines would be amended to harmonize and enhance the penalties for methamphetamine and amphetamine crimes; mandatory restitution would be required for such crimes; methamphetamine paraphernalia would be added to the Federal list of illegal drug paraphernalia; restrictions would be placed on the sale of precursor chemicals above a threshold quantity; \$5.5 million would be authorized for the Drug Enforcement Agency (DEA) to provide training to State and local law enforcement agencies in combating illegal methamphetamine and amphetamine drug use; \$15 million would be authorized for the Office of National Drug Control Policy (ONDCP) for law enforcement activities in methamphetamine high-intensity drug trafficking areas; \$9.5 million would be authorized for the DEA to combat amphetamine and methamphetamine manufacturing and trafficking; such sums as necessary would be authorized for research on curing and preventing methamphetamine addiction; \$10 million would be authorized for State and local grants to treat methamphetamine and amphetamine addicts; and \$15 million would be authorized to expand methamphetamine abuse prevention efforts, including school-based efforts.

(See other side)

YEAS (50)			NAYS (49)			NOT VOTING (1)	
Republicans (47 or 87%)		Democrats (3 or 7%)	Republicans (7 or 13%)	Democrats (42 or 93%)		Republicans (1)	Democrats (0)
Abraham	Hutchison	Byrd	Chafee, Lincoln	Akaka	Kennedy	McCain- <sup>2</sup>	<b>EXPLANATION OF ABSENCE:</b> 1—Official Business 2—Necessarily Absent 3—Illness 4—Other  <b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay
Allard	Inhofe	Conrad	Collins	Baucus	Kerrey		
Ashcroft	Kyl	Lieberman	Craig	Bayh	Kerry		
Bennett	Lott		Crapo	Biden	Kohl		
Bond	Lugar		Gorton	Bingaman	Landrieu		
Brownback	Mack		Jeffords	Boxer	Lautenberg		
Bunning	McConnell		Specter	Breaux	Leahy		
Burns	Murkowski			Bryan	Levin		
Campbell	Nickles			Cleland	Lincoln		
Cochran	Roberts			Daschle	Mikulski		
Coverdell	Roth			Dodd	Moynihan		
DeWine	Santorum			Dorgan	Murray		
Domenici	Sessions			Durbin	Reed		
Enzi	Shelby			Edwards	Reid		
Fitzgerald	Smith, Bob			Feingold	Robb		
Frist	Smith, Gordon			Feinstein	Rockefeller		
Gramm	Snowe			Graham	Sarbanes		
Grams	Stevens			Harkin	Schumer		
Grassley	Thomas			Hollings	Torricelli		
Gregg	Thompson			Inouye	Wellstone		
Hagel	Thurmond			Johnson	Wyden		
Hatch	Voinovich						
Helms	Warner						
Hutchinson							

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

mandatory minimum sentence of 10 years would be imposed for trafficking in 500 grams or more of powder cocaine, and a mandatory minimum of 5 years would be imposed for trafficking in 50 grams or more (the current limits are 5 kilograms and 500 grams, respectively; the current limits for "crack" cocaine are 50 grams and 5 grams, respectively.)

- Other provisions to reduce illegal drug use. Penalties would be increased for trafficking in certain precursor chemicals. New restrictions would be placed on the mailing of precursor chemicals. Penalties would be increased for distributing drugs to minors or selling drugs in or near a school zone. Posting of information on the Internet on the manufacture of methamphetamine or other controlled substances would be illegal if the intent was to engage in illegal drug activities. It would be a Federal offense to steal anhydrous ammonia (a precursor chemical for methamphetamine that is used as a fertilizer). The current requirement that schools, to be eligible to receive Federal education funds, must have a policy of expelling armed students and reporting armed students to law enforcement authorities would be expanded to also require the expulsion and reporting of students who were found to be in the possession of felonious quantities of illegal drugs or dealing illegal drugs on school property. As under current law for armed students, the chief educational officer would be able to waive the expulsion of a drug-dealing or drug-possession student.

- School safety. Schools would be permitted to use Federal education funds to pay the educational costs of allowing students who had been the victims of rape or other violent assaults on school grounds to transfer to safer schools of their choice, including private or religious schools. Schools could not use Federal funds to give aid to a student who chose to go to a school that discriminated on the basis of race, color, or national origin.

- Domestic terrorism. The Federal Bureau of Investigation (FBI) would be required to assess the threat posed to the United States and its territories by the Fuerzas Armadas de Liberacion Nacional Puertorriquena (FALN) and Los Macheteros terrorist organizations (President Clinton recently offered clemency to 16 terrorists from those groups; 11 of those terrorists have now been released; prior to the jailing of those terrorists, those groups had set off more than 130 bombs in public places, including shopping malls and restaurants, killing and wounding innocent men, women, and children).

**Those favoring the amendment contended:**

This amendment would make our citizens safer by cracking down on drug crimes and violent crimes. The first major section of the amendment would start a broad, comprehensive effort to control the alarming spread of methamphetamine use and to treat those people who have already become addicted. At the start of this decade the use of this highly addictive, highly destructive illegal drug was rare. For instance, in Missouri, in 1992, there were only 2 seizures of clandestine meth labs. Last year there were 679 seizures of such labs in Missouri. As with all other use of illegal drugs in the 1990s (except crack cocaine), the percentage of teens who use methamphetamine has grown astronomically, especially the percentage of younger teens. Our hope with this amendment is that we will finally begin to turn the tide against this dangerous drug.

The next major section of the amendment would increase the currently weak penalties for selling powder cocaine in order to bring them closer to the effective penalties for selling crack cocaine. Currently, one needs to sell 100 times as much powder cocaine as crack cocaine to get the same minimum penalties. This amendment would cut the ratio to 10 to 1. Since 1991, homicides have dropped by 31 percent and robberies by 32 percent, and criminal justice experts agree that the principle cause for the declines has been the aggressive efforts to arrest and imprison crack dealers. This tough enforcement and punishment has curbed the crack cocaine epidemic and the violent gang activity that has accompanied it. The rise and fall of violent crime in the 1980s and the 1990s parallels the rise and fall in the use of crack cocaine. Due to the tough penalties, street-level dealers have often been willing to name their suppliers in return for leniency, which has greatly helped prosecutors work their way up through and destroy criminal gangs.

The war against other drugs, including powder cocaine, which is the precursor chemical for crack, has been much less successful in the 1990s. In fact, since the United States went from aggressive funding for anti-drug programs and a "just say no" message to the Clinton Administration's slashing of funding and "I wish I had inhaled" message, drug use has skyrocketed among teens. For instance, teen marijuana use went up 180 percent between 1992 and 1997, methamphetamine use doubled, and cocaine use tripled. In the last year teen drug use went down slightly, but it is still nearly twice what it was when the Clinton Administration took office.

Increasing the penalties for powder cocaine dealing would make them, like the penalties for crack dealing, effective. These tougher sentences would also help in the war on crack, because powder cocaine is the precursor chemical for crack. Higher-level drug dealers rarely distribute crack; they sell powder to lower-level dealers who then turn it into crack and sell it in small quantities on the street. Thus, this amendment would help in imprisoning drug lords instead of just small-time dealers.

Crack cocaine is a drug used primarily by black Americans and powder cocaine is a drug used primarily by white Americans, a large percentage of whom are financially well off. Around 90 percent of the people who are arrested for selling crack are black, non-Hispanic whites comprise the largest percentage of arrests for selling powder cocaine (39 percent), and 58 percent of powder cocaine users are white. Many people believe that the disparity between the treatment of crack dealers and powder cocaine dealers reflects a bias in favor of whites. We do not know if our colleagues oppose increasing punishment for powder cocaine dealers because of who may be arrested. Certainly wealthy individuals or their children may end up getting arrested, and certainly some of the people who arrested may even be personally acquainted with Senators. Perhaps that fact influences our colleagues, but it does

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not influence us. Beyond any doubt increasing penalties as proposed in this amendment would result in greater percentages of whites serving long jail sentences for drug dealing, including whites who sell powder cocaine to street-level African American dealers for conversion to crack. However, for us, the race and ethnicity of the people arrested makes no difference. Our goal is to stop drug dealing.

Some of our colleagues have said that at least part of the way the disparity between crack and powder sentences should be removed is by lowering crack sentences, which they think are too severe. They want to raise the amounts at which mandatory minimum sentences are imposed. We strenuously disagree. The one part of the war on drugs that is being won is on crack cocaine, and we do not want to send any public message of retreat which would inevitably encourage greater crack use. Even more importantly, we note that the current level of 5 grams for the first mandatory minimum sentence was set for a reason—drug dealers rarely carry more than that amount on them at any one time. If we made the type of increase that our colleagues favor (and the Clinton/Gore Administration favors) then we would virtually end mandatory minimum sentences for crack.

This amendment would not demand total parity in treatment between crack and powder cocaine for two main reasons. First, powder cocaine dealers typically are arrested with larger quantities, so a higher mandatory minimum amount would still result in many mandatory minimum sentences. Second, powder cocaine is not as addictive as crack, which is so powerful that many people become hopeless addicts after just one use.

The third major section of the Hatch amendment would give schools the option of using Federal education funds to pay to send students who have been victimized by violence on school grounds to other schools of their choice. The amendment would allow students to pick private schools and parochial schools. Some Senators have said that they do not like this idea; they would prefer that we instead require students to stay in the schools in which they have been attacked and try to improve the schools. This solution is cruel beyond words. For instance, each year there are 4,000 sexual assaults reported on school grounds. A large number of those assaults are in dangerous, gang-ridden schools and are on girls whose parents are too poor to afford to send them to safe private schools. By law, those girls must continue to go to school. Our fine liberal colleagues say that the solution is to force a girl who has been raped by a gang member to continue to go to that same school filled with other members of that gang and just try to improve the school. They have suggested such steps as adding more counselors or after school programs. How would they feel if it were their daughter and they could not afford to move her to a safe school? Would they like to be told by a school administrator that they need not worry because the school was taking strong action by hiring counselors for the gang members and starting them an arts and crafts class? Our colleagues need to face reality. Certainly efforts can and must be made to improve dangerous schools, but some kids are more likely to be targeted than others because they are less able to defend themselves. When they are in dangerous schools that cannot protect them, and they have been victimized, it is unspeakably cruel to force them to stay in those schools where they may well be victimized again.

Another major provision of this amendment, about which our liberal colleagues have been discreetly silent, would make the FBI assess whether Americans are again at risk of a wave of terrorist attacks from Puerto Rican terrorists, now that President Clinton has released from prison the leaders of the two major Puerto Rican terrorist groups. Before those leaders were in prison their groups went on a bombing spree in America, wounding and killing men, women, and children. The Clinton Administration has refused to release information on why it let those leaders go, citing Executive privilege. That claim of privilege is unacceptable. The American people have a right to know whether their lives have been risked by the President's grant of clemency, and this provision would have the FBI find out.

The broad purpose of this amendment is to make America safer for law-abiding citizens. It would expand the war on drugs, it would protect children who have been attacked in school by letting them to escape to safer schools, and it would act to gather the information that we may need to stop a new wave of terror from being unleashed by the terrorists that President Clinton has seen fit to pardon. We strongly urge our colleagues to support this amendment.

**While favoring** the amendment, some Senators expressed the following reservations:

We enthusiastically support most of this amendment. Our one area of concern is with the powder cocaine section. We agree that we need to get closer parity between the treatment of crack and power cocaine, but we also believe that the current treatment for crack cocaine use needs to be reformed. Currently, we have inadequate enforcement and too harsh sentences. A few dealers are arrested and serve very long sentences. We think it would make a lot more sense if we lowered the mandatory minimum sentences and increased enforcement, so we would end up jailing a lot more drug dealers for shorter sentences. We think it would be a greater deterrence if dealers knew that it was likely they would serve a few years in prison than if they knew it was unlikely they would get caught and have to serve longer terms. With this caveat, we support this amendment.

**Those opposing** the amendment contended:

Argument 1:

The section of this amendment on methamphetamine has broad, bipartisan support. If this amendment contained nothing else,

we would happily support it. Unfortunately, it also has totally unacceptable provisions on powder cocaine and school vouchers.

On powder cocaine, it would increase penalties to make them closer to the penalties given to crack dealers. The problem with this approach is that the current penalties on crack dealers are much too high. They ensnare low-level dealers, nearly all of whom are poor, minority youth. Our Federal prisons have been filling up with young kids, many of them nonviolent, who have been given huge mandatory minimum sentences for selling tiny amounts of crack cocaine. This approach is harsh and it is foolish. There are much more cost-effective ways to discourage illegal drug use. The Sentencing Commission has recommended raising the amounts of crack that must be sold before the mandatory minimum sentencing takes effect, the President has agreed with that recommendation, and we agree as well. What we really need are stronger gun control laws, much greater spending on prevention and treatment programs, and more efforts to arrest drug kingpins. As we see it, our colleagues want us to duplicate the current wrong-headed policy on crack cocaine by enacting a similar policy for powder cocaine. This approach, we admit, is supported by some people because they think that the current penalties reflect a bias in favor of white users of powder cocaine. However, we note that most of the people arrested for powder cocaine dealing are minorities and that if we were to move the sentencing threshold lower we think that the percentage of minorities arrested for powder cocaine dealing would increase. The end result would be that 10,000 more low-level drug dealers, mostly minorities, would end up in prison, at a 10-year cost of about \$10 billion.

The provision on vouchers is equally offensive. Our colleagues seem to think that instead of fixing our public schools we should pay students to flee them. They have added a provision that would let schools take any Federal education funds that they receive and give them to send students to other schools who have been victimized by violence. What would that do for the students who remained? We think that instead of running from the violence we should confront it head on and find ways to make dangerous schools more safe. For instance, we could increase funding for after-school programs to keep kids out of trouble, or we could pay for more school counselors. Even worse, this provision would allow students to use vouchers to go to religious schools, which raises very troubling questions about the separation of church and state. Suppose all or nearly all of the students in a district decided to attend a parochial school; all of the people in that district, whether Catholic or not, would be taxed to pay for that attendance. No public school to speak of would remain. We think it is much more advisable to keep a strict separation between church and state. Public school funding should be reserved for nonreligious schools only.

Either of these two provisions are bad enough to make us oppose this amendment despite the meritorious provision on methamphetamine. We do not need to warehouse more minority, low-level drug dealers, and we should not encourage the abandonment of dangerous public schools. This amendment should be rejected.

#### Argument 2:

One small part of this amendment is so bad we must oppose it, even though as conservative Republican Senators we strongly favor the methamphetamine, powder cocaine, school safety, and terrorist threat assessment provisions. That part, which has not attracted a great deal of attention, would condition Federal education funds on a school district adopting a policy of expelling students for selling or possessing felonious quantities of drugs on school grounds. We favor schools having such a policy, but we strongly oppose the Federal Government trying to force them to have such a policy. This issue is a local issue that, under our Federal system of Government, should be solved locally.